The Investigative System of Islam

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Abstract:
The Holy Prophet (PBUH) was sent to establish justice. He made use of law and good conduct to achieve this great target. Complete investigation and transport exploration is of universal value that holds fundamental significance in legal system. This research article presents insight, broadness and transparency of investigatory system established by the Prophet (PBUH). It also highlights rules and laws in the light of valid research references. All these features are evident in Prophet's personality. In this regard, keeping in view the nature of topic, the guidance has been sought from the commands of The Quran, Hadith and different incidents of the life of Muhammad (SAWW). A discussion has been premeditated to explore Prophet's tactics regarding law of investigation. This research article, having research outlook and logical link, touches upon the rules and principles which the Holy Prophet (PBUH) has given us for the recognition of the real culprit of good judgment, clues and witnesses.
Investigative departments are radically important for the protection of Islam, maintenance of peace, internal stability and the protection of life, honor and property of people living in the society. The charter of these agencies is to abolish oppression, establish justice, impose the writ of law, and punish the guilty and to bring lawbreakers within the grip of law. The officer who performs the above duties is known as Naazir e Jaraaim[1] in Islamic jurisprudential terminology. Further duties which fall within the remit of this officer are: Investigation of charges, production of the accused before a court of law, getting proven criminals sentenced by the court, executing the sentence handed down, releasing the accused in case evidence is not sufficient and getting wrongful accusers punished properly.

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Qur'anic Injunction Regarding Investigation of An Accused:

Hazrat Sulaiman PBUH was annoyed at the absence of the woodpecker. When it told him of the reasons of its absence and informed him about Queen Saba, he said:

''He said he will soon see whether you have told the truth or are among the liars''[2]

Similar matters between husband and wife can also be settled in this way. Sometimes, an oath can also be used to settle matters of accusation and counter accusation.[3] When the Queen of Egypt accused Hazrat Yousuf PBUH, we get methods of investigation from the Holy Quran.[4]

Proper investigation and arrival at the correct inference requires God-given talent and intelligence. This ability is only gained as a result of *Taqwa*. Allah Taa'la has said,

''O ye faithful, If you adopt taqwa Allah shall give you the power to discriminate and shall erase your shortcomings''[5]

Sayyiat means an evil which multilates appearances and distorts meanings.[6]

This means that, because of *taqwa*, Allah shall grant humans such insight and intelligence that all matters shall improve instead of deteriorating. Investigation needs insight and intelligence. Therefore, it is necessary for the investigator to adopt *taqwa.*

According to Ameen Ahsan Islahi's exegesis of the above *verse*, ***furqan*** means the power to discriminate between Right and Wrong.[7]

This power to discriminate may be internal or external. It may be a mental faculty, a circumstance or set of circumstances or even an event or events.

Mualana Maudoodi writes that if you have the fear of Allah in your heart, your insight itself will tell you the difference between the correct and the wrong path.[8]

Pir Karam Shah has also explained the meaning of *furqan* as the power to discriminate between Right and Wrong.[9]

In *Tafseer-e-Mazhari,* the meaning of *furqan* is explained as:

''The insight of your hearts by which you distinguish between Right and Wrong.''[10]

Mufti Muhammad Shafi has explained *furqan* as "good counsel" and "enlightened heart''.[11]

The same meaning of *furqan* has been given in *Tafseer-e-Majidi.*[12]

Pronouncing judgment without investigation and research is an inclination of the Devil.

Allah says: that during a journey or in *jihad,* if a stranger greets you with *salaam,* properly check whether he/she is a Muslim or not.[13]

Shah Abdul Qadir has also translated in this same way.

It is also a known fact that The Holy Prophet PBUH had a properly organized team for investigation and research.The ability to investigate and research has been considered a gift of Allah. Allah says:

' 0 ye faithful, when you set out in *jihad*, investigate well beforehand and whoever greets you first with *salaam*, consider him not a *non-momin.''*

This verse makes it clear that before acquitting or sentencing an accused, it is compulsory to investigate and research thoroughly. *Tafseer-e-Haqqani* also gives the same translation.[14]

Maulana Shabbir Ahmad Usmani also writes under this verse

"And when they hear anything concerning hope or fear, they spread it without any verification''. [15]

If they took such information to the Messenger of Allah and the discerning elders of their people, the knowing ones would verify it properly. Had you not been blessed by the kindness and grace of Allah, excepting a few, most of you would have followed the Devil.''[17]

Mufti Shafi writes: Muslims should not take any action only on the basis of whims. No action is justified without proper investigation and research.[18]

Maulana lslahi writes that action should be taken after proper investigation and research.[19]

Maulana Maudoodi writes that facts can only be ascertained by investigation.[20]

An important element of investigation is the gathering of evidence about an occurrence, an examination of the place of occurrence.[21] Facts about the group and network of the criminals can only be gained by investigation. Provision of evidence by a bonafide officer is called investigation.[22]

Conditions and circumstances surrounding an event become the basic element of investigation.It is the saying of The Holy Prophet PBUH:

"Allah condemns folly, therefore be wise and sagacious[23]."

Investigating Officers of the Holy Prophet PBUH

The Holy Prophet PBUH appointed Hazrat Annas bin Ishaq as an investigative officer in case of adultery.[24] Hazrat Bra bin Aazib narrates that the Holy Prophet PBUH sent Abu Barda bin Nir to investigate a case where a man had allegedly married his own widowed step-mother. After proper investigation, The Holy prophet PBUH sent Abu Barda to behead the man. [25]

Abu Muwaviyya Qarra was also appointed as an investigation officer in another case. Ibn Sharjeel took some fruit from an orchard in Madina without the permission of the owner. The owner stripped him half naked and inflicted violence on him. Ibn Sharjeel complained to the Holy Prophet PBUH who sent a team to arrest the perpetrator who was admonished by the Holy Prophet and ordered to return the clothes of Ibn Sharjeel[26].

A study of the books on the traditions and examples of the Holy Prophet reveals the following basic principles of investigation:

Investigation by Medical Report:

There is guidance in the Ahadith for better investigation, before sentencing. When the adultery case of Maaz bin Maalik came up in the court of the Holy Prophet PBUH. He discarded the confession of guilt and asked the tribe of Maaz about it. They said that they saw no mental infirmity in him. [27]

The Holy Prophet PBUH also inquired as to whether Maaz bin Maalik was under the influence of wine. One of the ones gathered there smelt the breath of the person and reported the absence of any aroma of wine. There is always a possibility that an accused might make a confession under the influence of some mental infirmity.[28]

The Observance and Application of Legal Provisions during Investigation:

It is noteworthy that the Holy Prophet PBUH gave complete consideration to every clause of the law during an investigation so as to fulfill every requirement of justice. When a Jewish man and a Jewish woman were brought before him in a case of adultery, the Holy Prophet asked them about the punishment of this crime according to the Torah in their religion. The man replied that it was a public blackening ofthe face. The Holy Prophet asked him to read from the Torah. The man did while hiding the section of *rajm* with his hand.

Consequently, the Holy Prophet PBUH called Hazrat Abdullah bin Salaam who asked the Holy Prophet to order the man to remove his hand from the pertinent text. Hence, the sentence of *rajm* was passed.[29] This is the basic spirit of *furqan* which enabled the proper cognizance, investigation and just judgment to be passed.

Affidavit of the Accused Party:

Once the Holy Prophet saw that a Jew's face was blackened and he was being lashed. The Holy Prophet asked a Jew whether this was the proper punishment for adultery in Judaism. The Jew replied that it was. The Holy Prophet asked him formally while invoking the name of Hazrat Musa PBUH.

The jew told the truth while admitting that the formal question had bound him to the factual reply.[30] This shows the importance of an affidavit from the accused party.

Wisdom of the Investigation System:

The majority of the human race is afflicted with selfishness, narcissism, false accusation, gossip and negative criticism. The system of investigation laid down by the Holy Prophet ensures that human beings are shielded from their own negative trends. A simple accusation by one person should not be enough to sentence an accused. If this is allowed to happen, society will always remain fraught with crimes and injustice. The Holy Prophet said:

''If people are awarded according to their cliams, they would lay claim even to the lives and properties of one another''[31]

This means that if every claim is entertained without due process of investigation by the law, no *one's* life, property and prestige would be safe. This golden rule of investigation stems from the graciousness of the Holy Prophet PBUH. At that time, physical torture and false promises were not made to an accused. Rather, the facts were ascertained by wisdom and God-given insight.

Once Hazrat Safwan bin Umayya accused a person of stealing his sheet and brought him before the Holy Prophet. The man confessed to the crime. The Holy Prophet told those present to take the man away and cut off his hands.[32] This shows that the sentence is not to be executed in the court.

The Difference between a Simpleminded Complainant and a Glib Accused

The Holy Prophet PBUH was always mindful of the fact that an investigative officer should not be influenced by the facile cunning of the accused. Rather, objective conditions and facts were kept in consideration. Similarly, the investigating officer was cautioned against allowing the ignorance or simplemindedness of any person to militate against the norms of justice.[33]

Consideration for the Human Shortcomings of an Honest Investigating Officer:

An exemplary investigating officer is never an angel to be free of normal human failings. It is completely natural for a human being to make mistakes in spite of the best of intentions. Nobody is perfect and nobody is totally correct. In this regard, the Holy Prophet says:

''When an investigating officer makes a correct judgment through his *ijtihad* he will get a double reward. If he makes a wrong decision through his *ijtihad* he will get a single reward''[34]

Training of Successful Investigating Officers:

It is incumbent upon a talented investigating officer to prepare others to follow in his footsteps so that his talent and ability do not depart with him when he dies away. The Holy Prophet PBUH gave invaluable guidance and counsel to those under his supervision. Two incidents illustrate this.

Hazrat Abu Huraira relates that the Holy Prophet PBUH said: Two women were going with their respective sons. A wolf came and carried away the son of one of the women. Both maintained that the wolf had carried away the other's son. Consequently, they brought their case before Hazrat Sulaiman bin Daud. He decided in favour of the older woman. They left and appeared before Hazrat Sulaiman bin Daud and related all to him. He told them to bring a knife so that he could divide the boy between the two women. The younger

beseeched him not to do so and said that the child was the older woman's. He decided the case in favour of the younger one.[35]

The second incident is when the Holy Prophet said that one man bought land from another man. A pitcher of gold was then discovered under the earth. The buyer told the seller to take the pitcher as the buyer had paid only for the land and not the gold. The seller said that he had sold the land along with whatever was contained in it. Consequently, they took their case to a third man. The mediator asked them if they had children. One answered that he had a son and the other said that he had a daughter. The mediator told them to marry the two offspring to each other and spend the gold on them.[36]

These incidents were actually part of the training imparted to investigating officers.

Suspicious People to Be Kept Under Surveillance:

Anti-social elements always try to bring harm to society. The Holy Prophet PBUH always kept such elements under surveillance. This was mostly instrumental in pinpointing criminals. A Jew stoned a Muslim girl and snatched her ornaments. The injured girl was brought before the Holy Prophet. She was alive yet. The Holy Prophet questioned her about her attacker. She only nodded in the affirmative when he named the Jew. The Holy Prophet ordered the arrest of the Jew and orders his head to be crushed between two stones.[37]

This shows that the Holy Prophet had a record of suspicious persons. This is why he put forward a number of names for the injured girl to consider.

Investigation through Question and answer:

Muslim and Bukhari relate that a person brought the murderer of his brother before the Holy Prophet PBUH, Who asked the accused:

''Why did you murder him?''

He replied: I and that man were picking leaves from a tree when he cursed me. In anger, I hit him on the head with my axe and killed him.[38] When Maaz bin Malik committed adultery, the Holy Prophet PBUH said to him:

"Is the information I have received about you true?"

He asked in return: What information about me has reached you?

The Holy Prophet said: "That you have committed adultery with such and such a girl." He said: Yes, bring four witnesses.[39]

Then *rajm* was carried out on him by the command of the Holy Prophet.

Appointment of Deputy Investigating Officer:

The Holy Prophet heard the opinions of many Companions on the incident of Ifek. The words of in Bukhari Sharif are:

''The Holy Prophet PBUH summoned Hazrat Ali and Hazrat Osama bin Zaid and consulted both of them."[40]

This proves that the senior investigating officer can consult his subordinates.

Consulting Women while Investigating Women:

Hazrat Ali suggested to the Holy Prophet PBUH that Hazrat Aisha's maid Baraira should be consulted. She testified to the purity of Hazrat Aisha,[41] this lays down the general principle that, in matters pertaining to women, ladies of impeccable credentials can be consulted as and when necessary.

Investigation of Every Person Connected with the Incident:

During the abovementioned incident, the Holy Prophet said to Hazrat Aisha:

‘’Aisha such a such information has reached me about you. If you are innocent, Allah will reveal that shortly. If you are guilty, confess it and repent.’’[42]

This shows the importance of questioning every person concerned with the incident.

Announcement of Result of Investigation:

When the Holy Prophet, Hazrat Ali, Hazrat Osama and Baraira had completed the investigation and the innocence of Hazrat Aisha was proved, the Holy Prophet announced the verdict from the pulpit thus:

‘’O ye Muslims, who shall visit retribution upon the accuser of my wife? By God I found my wife to be virtuous.’’[43]

Impartial Investigation:

The Holy Prophet of God PBUH investigated cases without any bias, prejudice, or partiality. Once, there was a quarrel between a Muslim and a Jew and the former hit the latter with a stone. The Jew complained to the Holy Prophet about this. The Holy Prophet investigated the matter and admonished the Muslim to desist in future. This incident illustrates the rule of impartial investigation[44].

Investigation regardless of social status and standing:

Investigation should be carried out without any regard for the subject's eminence or status. The Holy Prophet investigated Hazrat Hatib bin abi Balta'a about the sending of a letter to the people of Mecca before the conquest of that city. During this investigation, the Holy Prophet did not let the subject's social standing become a factor in the investigation. This is the occasion when Surah al Mumtinah was revealed.[45]

The Accused to be informed of all Consequences and Implications

Hazrat Hatib bin abi Balta'a sent a woman named Sarah to Mecca with the aforementioned letter. The Holy Prophet sent Hazrat Zubair, Hazrat Ali and Hazrat Maqdad al Aswad to retrieve that letter. The carrier denied possession of the letter until she was threatened with disrobement. [46] This incident proves

that, during investigation,the accused may be put under pressure to get appropriate results. Abu Daud has included a chapter in the Kitab al Hadood. This shows that, during an investigation, a suitable remand of the accused may be taken.

Inference from Clues and Evidence:

A hypocrite named Bashar bin Ubairuq stole a bag of flour from the house of Hazrat Rafa'a. The kitchen fire of the thief s house kept burning for an inordinate period and led the investigators to him. At first, he denied any wrongdoing, and then wrongly accused Labaid bin Sehl. Finally, he fled to Mecca after his guilt was proved. [47] This incident shows that observation of clues and evidence is an intrinsic part of the Holy Prophet's method of investigation.

Prohibition of Personal Insult to the Accused:

There should be no personal insult to the accused during and after the investigation even if guilt has been proved. This is evidenced by the following:

Hazrat Abu Huraira relates that a drunkard was brought before the Holy Prophet who prescribed a spanking as punishment. When that had been carried out, some people told the perpetrator that Allah had debased him. The Holy Prophet forbade them to utter this saying that in doing so they were helping the devil.[48]

When Abdullah Hamaar drank wine some people invoked the curse of Allah on him. But,the Holy Prophet PBUH told them to desist, reminding them that he bore love for Allah and his Messenger.

When Hazrat Umar expressed reservations at the Holy Prophet's offering of *Namaz-e-Janaaza* for a stoned woman,the Holy Prophet said that she had so much heartfelt contrition that it could be divided among seventy people of Madina and be enough for their salvation.[49]

Instruction in Methods of Investigation:

The Holy Prophet PBUH undertook to educate his followers in the methods of investigation so as, avoid a high rate of litigation and consequent overburdening of the judicial system. BukhariSharif relates that a villager suspected his wife when a dark complexioned child was born to her. The Holy Prophet asked him about the color of one of his camels, and he replied that it was red. The Holy Prophet asked him if he had a brown camel, he replied in the affirmative. Then the Holy Prophet asked him about the pedigree of both the animals. The man replied that both the animals had the same pedigree. The Holy Prophet assured him that his child's complexion was also derived from his pedigree50. Hence, the wisdom of the Holy Prophet saved this family from litigious disaster.

Technique Instead of Torture:

The investigative methods of the Holy Prophet were based on wisdom rather than torture. Some time before the Badr campaign, some Muslims spotted

two suspicious individuals beside the Well of Badr. The Holy Prophet saw that theyoore marks of violence. bn his inquiry, tlie captors revealed that they had been beating the two up in order to find out the size of the army coming from Mecca. The Holy Prophet told them to desist and then asked the two men how many camels were being slaughtered for the advancing army. The replied nine and ten camels were being slaughtered on each alternating day. From this information, the Holy Prophet inferred that the Meccan army was between 900 to 1000 strong. [51] This wise method of investigation provided the Muslims with quality intelligence which enabled them to formulate a good battle strategy.

Detention of the Accused during Investigation:

A theft took place in the tribe of Kala'a and they suspected some people in this regard. Hazrat Nauman bin Bashir detained the suspects for some days and freed them aftger investigation failed to turn up any evidence of their guilt. The accuser complained that they suspects had been freed without any third degree methods being applied. Nauman bin Bashir said that violence would be justified if it succeeded in restitution of the accuser's loss. However, he added that, if such did not turn out to be the case, the accuser would have to undergo the same kind and amount of violence. The accuser backed off remarking that this was the command of Nauman bin Bashir. But, the latter informed him that this was, in fact, the command of Allah and his Prophet.[52] In the words of Nasai Sharif:

‘’ The Holy Prophet detained an accused and released him later when the accusation proved false’’[53 & 54]

Consistent Standard of Investigation during both Peripatetic and Settled Conditions:

The Holy Prophet PBUH always decided cases wisely and expeditiously even during journeys and campaigns. On Shaaban 5, AH, while returning from the campaign of Banu al Muthliq, the the great hypocrite Abdullah bin Abi said that respectable people like us will not let decadent people enter Medina.[55] The young Companion Zaid bin Arqam reported this to the Holy Prophet who inquired if the information was not a lie. Zaid swore that he had it with his own ears. The Holy Prophet again inquired whether there was any room for misunderstanding. Zaid said there was none. Then the Holy Prophet PBUH summoned Abdullah bin Abi and questioned him.[56] The hypocrite habitually swore wrongly but the Holy Prophet did not charge him. So, Allah mentioned Abdullah bin Abi's hypocrisy in Surah al Munafiqoon. Returning from the same campaign, Hazrat Umar's slave Jehjah Muhajir and an Ansari Sanaan bin Wabra Janbi fell into an altercation over water. The Holy Prophet investigated the matter and found that Jehjah was at fault. Consequently, the Holy Prophet mediated a settlement between them.[57] This shows that the Holy Prophet was meticulous in his investigative methods both in peripatetic and settled conditions.

Investigation through Tracking:

During investigation,the Holy Prophet PBUH used to make use of the services of trackers too. The Bedouins of Arabia were great trackers. Consequently, when the tribals of Akl or Areena plundered and killed in the pastures of Medina, the Holy Prophet had them arrested by the use of trackers. Abu Daud Sharif states:

‘’The Holy Prophet PBUH sent a team of trackers after these people and these trackers apprehended them’’ [58]

The Holy Prophet also used to keep a record of investigation. A Hadith of Nasai Sharif states relates that a woman used to borrow jewelry. Once,she did not return it. The Holy Prophet ordered the woman to repent and return the borrowed property. She did not heed this command even after repeated warnings. So, the Holy Prophet ordered that her hand be amputated. [59]The repeated warnings demonstrate that a record of the investigation was kept.

Exemption from Execution:

According to the investigative system of the Holy Prophet PBUH, sentence was carried out only of investigation proved that the convict did not belong to the class of people exempted from execution. The saying of the Holy Prophet means that three kinds of people are exempted from execution, a sleeper until he awakes, a mentally unfit person until he recovers, and a child until he grows up.[60] The Criminal Procedure Code of Pakistan stipulates the lodging of a case under section 154 as every incident has its own aspects. As such there are no clear regulations for investigation. However, the practices and sayings of the Holy Prophet PBUH afford deep insights into these matters.

Desistance from Suspicion and Idealism:

The investigative process should be free of suspicion and idealism. The former hurts the reputation of virtuous people whereas the latter encourages wrongdoers. The Holy Quran states:

‘’0 ye faithful, refrain from excessive speculation as some speculations are sinful’’ [61 & 62]

The Holy Prophet said: ‘’If you try to reach the hidden conditions of people you will ruin them, or at least, bring them near ruination.’’ [63]

Hazrat Umar heard singing from a house and looked over the wall to censure the owner. The owner objected to Hazrat Umar's transgression into his home. Hazrat Umar admitted this transgression and elicited a promise from the owner to desist from sin in future.[64] The following prayer can also be useful in making an investigation correct and pure:

‘’0 Allah, show us the truth as truth and teach us to follow it. Show us falsehood as falsehood and give us the fortitude to avoid it. O Allah, show us things as they really are.’’[65]

Investigation through Testimony:

The method of investigation of the Holy Prophet was based on true testimony. He always called for true testimony and condemned false testimony.

[66 & 67]He never accepted the testimony of disreputable people neither that of a slave in favor of his master nor that of one enemy against another. [68] Once, he disallowed the *rajm* of an adulteress because there was no testimony against her.[69]

Conclusion:

The investigative system of the Holy Prophet PBUH was based on the fundamental principles of truth, justice, psychological considerations, objective conditions, oath, evidence, and testimony. It was necessary for the accuser to present evidence and the benefit of the doubt went to the accused. He was not only a sagacious judge but also an astute investigator as justice cannot be served without incisive investigation. In the words of the Holy Quran:

''The person who inflicts cruelty will be punished by us and then he shall be presented before his God who shall punish him grievously'' [70]

The towering personality of the Holy Prophet dominated the judicial and executive processes of the time. But, the separation of judiciary and executive can be seen in its embryonic form where the Holy Prophet PBUH investigated an accused, pronounced sentence and then handed him over to his officials.

He is a perfect role model for the investigative, judicial, and executive institutions of the modern Islamic State. It is also noteworthy that no other religious personality affords us such a complete and comprehensive record of investigative, judicial, and executive administration.

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